

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7490 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and sd/-

MR.JUSTICE M.C.PATEL sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

KALUPUR COMMERCIAL CO-OP. BANK LTD

Versus

UNION OF INDIA & ORS

Appearance:

MR SN SOPARKAR for Petitioner

MR.MIHIR THAKORE WITH MR RP BHATT for Respondents

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE M.C.PATEL

Date of decision: 13/07/1999

ORAL JUDGEMENT (Per B.C. Patel,J.)

The petitioner, the Kalupur Commercial Co-operative Bank Limited (hereinafter referred to as the "successor bank") has filed this petition, inter alia, praying to quash and set aside the order dated 17.5.1994

(Annexure 'Z17'), whereby the successor bank was called upon to pay a sum of Rs.1,22,85,806/-. The petitioner has also challenged the certificate (Annexure 'Z18') of the same date.

It appears that Vikram Co-operative Bank Limited, a co-operative bank engaged in banking business, issued certain fixed deposit receipts in the names of different persons. One Omprakash Agrawal was the Chairman of the bank at the relevant time. On behalf of the respondents, it is pointed out that there were certain fixed deposit receipts prior to 18.11.1982 and prohibitory orders were passed on 18.11.1982 with respect to fixed deposit receipts. These fixed deposit receipts were seized and were in the names of different persons. On 18.11.1982, said Omprakash Agrawal addressed a letter to the bank to appropriate the amounts of the fixed deposit receipts against the loan which was advanced to him. It appears that on 26.6.1983, said Omprakash Agrawal addressed a letter along with the letter of authority/letters of authority signed by the persons in whose names fixed deposit receipts were issued, inter alia, requesting to adjust the dues. It appears that on 11.10.1985, Board of Nominees disposed of Lavadi Suit No.3180/84, which was filed by Vikram Co-operative Bank Limited. Contentions were raised before the Board of Nominees that the income-tax department seized the receipts and in view of injunction, Vikram Co-operative Bank Limited could not appropriate the amounts payable under the fixed deposit receipts towards the amount of loan. Board of Nominees has considered the contention raised by the defendant of that suit wherein it was contended that the fixed deposit receipts were handed over to the bank at the time of granting loan towards security or was hypothecated to the bank. The Court has rejected the contention. The Board of Nominees held that the fixed deposit receipts cannot be adjusted, as the same were neither pledged nor they were given as security. The order was carried in appeal before the Tribunal by the defendants and thereafter having failed there, before this Court by filing Special Civil Application. The defendants failed to get any relief and the petition was rejected with the observation that it would be open to the petitioner or owners of the fixed deposit receipts to take appropriate legal action against the authority which has seized the fixed deposit receipts. On 12.8.1991 the department called upon the bank to pay fixed deposit receipts of Rs.2,00,000/- only, as the same were in the name of Mr.Agrawal against the outstanding dues of the income-tax department. In reply thereto, it was contended by the bank that the bank had lien. It appears that thereafter on 27.9.1991, there was

amalgamation of Vikram Co-operative Bank Limited with the successor bank. Income Tax Officer on 2.2.1993 called upon the present petitioner to renew all the fixed deposit receipts along with the letters of the parties in whose names fixed deposit receipts were issued. The successor bank refused to renew the fixed deposit receipts and on an opinion of a lawyer to the effect that the bank was entitled to adjust the amount, passed a resolution on 30.8.1993 and accordingly appropriated the amount.

It appears that there was an order of attachment dated 9.3.1994. However, the same was withdrawn on 30.3.1994. There was fresh show cause notice on 12.4.1994 which is produced at page 227 of the compilation of the petition. The claim was disputed by filing an affidavit on 17.4.1994. Thereafter on 5.5.1994, show cause notice under Section 226(3) of the Income Tax Act came to be issued calling upon as to why the defence raised should not be rejected. It appears that on 10.5.1994 on behalf of the petitioner, application was forwarded for adjournment, as the Advocate was out of station. On 17.5.1994, the impugned order came to be passed.

At the outset, we put pointed questions that is there any material on the record to show as to how many fixed deposit receipts were seized or what was the amount covered by the fixed deposit receipts and whether the fixed deposit receipts were pledged/hypothecated with the bank? There was no material to show whether the fixed deposit receipts were signed by the persons in whose names the same were issued, by way of discharge, so that the bank can appropriate the amount or can adjust the amount. These were the vital questions. Mr. Mihir Thakore, learned Counsel appearing for the authorities, stated that the respondent has considered the same. However, in absence of details of the letters and in absence of affidavit, with regard to the factual aspects of the issuance of fixed deposit receipts, the details of the fixed deposit receipts and whether there was/were discharge letter/s or not, or whether the same were discharged or not, it is not possible for us to say, one way or the other. Mr. Thakore ultimately stated that as the show cause notice was issued and the petitioner was called upon to remain present and as he had not remained present, ex parte order has been passed. The department is willing to give an opportunity to the petitioner and to place necessary materials before the officer concerned to take appropriate decision.

Under the circumstances, we are not disposing of the matter on merits and we are keeping all the points raised by the petitioner and the other side, open. The impugned order is set aside only on the ground that sufficient opportunity was not given to the petitioner.

In view of this, we think that it would be just and proper to direct respondent No.2 to hear the petitioner and to pass an order afresh, without being influenced by any of the observations made by us herein. It is directed that the petitioner shall appear before the officer concerned and shall file its reply at the earliest and shall co-operate with the department for quick disposal of the matter. The respondent No.2 is directed to dispose of the proceedings within a period of two months from today. As a consequence of what we have stated, the order passed by the respondent No.2 dated 17.5.1994 is hereby quashed and set aside with a direction to decide the matter afresh. If the order that will be passed ultimately is adverse to the petitioner, the same shall not be enforced for a period of seven days. The application stands partly allowed. Rule made absolute to the aforesaid extent. No order as to costs.
